NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SUWY LEO,
 	
            Petitioner,
 	
     v.
 	
MICHAEL B. MUKASEY,[**] Attorney General,
 	
            Respondent.
	No. 06-71741
	
	Agency No. A77-101-194
	
	MEMORANDUM[*]

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 3, 2007[***]

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

     Suwy Leo, a native and citizen of Indonesia, petitions for review of the

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     [*]   This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

     [**]   Michael B. Mukasey is substituted for his predecessor, Alberto R. Gonzales, as Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

     [***]   The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Board of Immigration Appeals' ("BIA") order denying her motion to reopen to adjust status. To the extent we have jurisdiction, it is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *de Martinez v. Ashcroft*, 374 F.3d 759, 761 (9th Cir. 2004). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Leo's motion to reopen as untimely. *See* 8 C.F.R. § 1003.2(c)(2) (motions to reopen must generally be filed within ninety days of the final agency decision). We reject Leo's due process claim because she has not shown error. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) ("To prevail on a due process challenge . . . [a petitioner] must show error and substantial prejudice.").

We lack jurisdiction to review Leo's contention that the filing deadline should have been equitably tolled, because she failed to raise this argument before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (holding that exhaustion is mandatory and jurisdictional).

PETITION FOR REVIEW DENIED in part and DISMISSED in part.